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§ 44.52 May a State enact legislation to reallocate or redistribute PILT payments?

A State may enact legislation to reallocate or redistribute PILT payments. If a State enacts legislation, it must:

- (a) Notify the Department if the legislation requires reallocating or redistributing payments to smaller units of general local government (see 31 U.S.C. 6907);
- (b) Provide the Department a copy of the legislation within 60 days of enactment;
- (c) Provide the name and address of the State government office to which the Department should send the payment;
- (d) Distribute funds to its smaller units of general local government within 30 days of receiving the payment; and
- (e) Not reduce the payment made to smaller units of general local government to pay the cost of State legislation which reallocates or redistributes payments.

§ 44.53 What will the Department do if a State enacts distribution legislation?

If a State enacts distribution legislation, the Department will:

- (a) Notify the State that a single payment will be disbursed to the designated State government office beginning with the Federal fiscal year following the fiscal year in which the State enacted legislation; and
- (b) Provide the State with information that identifies the entitlement lands data on which the Department bases the payment.

§ 44.54 What happens if a State repeals or amends distribution legislation?

- (a) If a State repeals or amends distribution legislation, the State must immediately notify the Department in writing of this fact and send the Department a copy of the new law.
- (b) When the Department receives a notification under paragraph (a) of this section, it must:
 - (1) Determine if the State's process complies with 31 U.S.C. 6907. If the Department determines that it does not, we must notify the designated State

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government office that the Department will disburse payment directly to the eligible local governments; and

(2) Start the payments:

- (i) In the current Federal fiscal year, if the Department receives a copy of the State's amendatory legislation before July 1; or
- (ii) Start the payments in the next Federal fiscal year, if the Department receives a copy of the State's amendatory legislation after July 1.

§ 44.55 Can a unit of general local government protest the results of payment computations?

Any affected local government may file a protest with the Department.

§ 44.56 How does a unit of general local government file a protest?

The protesting local government must:

- (a) Submit evidence to indicate the possibility of errors in the computations or the data on which the Department bases the computations; and
- (b) File the protest by the first business day of the calendar year following the end of the fiscal year for which the Department made the payments.

§ 44.57 Can a unit of general local government appeal a rejection of a protest?

Any affected local government may appeal the Department's decision to reject a protest to the Interior Board of Land Appeals under 43 CFR part 4.

PART 45—CONDITIONS AND PRESCRIPTIONS IN FERC HYDRO-POWER LICENSES

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AUTHORITY: 16 U.S.C. 797(e), 811, 823d.

SOURCE: 70 FR 69829, Nov. 17, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 45.1 What is the purpose of this part, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in subparts A and B of this part contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory conditions and prescriptions that the Department of the Interior (DOI) may develop for inclusion in a hydropower license issued under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these conditions and prescriptions is granted by FPA sections 4(e) and 18, 16 U.S.C. 797(e) and 811, which authorize the Secretary of the Interior to condition hydropower licenses issued by the Federal Energy Regulatory Commission (FERC) and to prescribe fishways.

(2) The hearing process under this part does not apply to recommendations that DOI may submit to FERC under FPA section 10(a) or (j), 16 U.S.C. 803(a), (j).

(3) The FPA also grants the Department of Agriculture the authority to

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develop mandatory conditions, and the Department of Commerce the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where DOI and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under § 45.23:

(i) A hearing conducted under this part will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this part will be conducted by one of the other Departments, pursuant to 7 CFR 1.601 *et seq.* or 50 CFR 221.1 *et seq.*, as applicable.

(4) The regulations in subparts A and B of this part will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of § 45.60(a).

(b) *Alternatives process.* The regulations in subparts A and C of this part contain rules of procedure applicable to the submission and consideration of alternative conditions and prescriptions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a condition deemed necessary by DOI under section 4(e) or a fishway prescribed by DOI under section 18.

(c) *Reservation of authority.* Where DOI notifies FERC that it is reserving its authority to develop one or more conditions or prescriptions during the term of the license, the hearing and alternatives processes under this part for such conditions or prescriptions will be available if and when DOI exercises its reserved authority. DOI will consult with FERC and notify the license parties regarding how to initiate the hearing process and alternatives process at that time.

(d) *Applicability.* (1) This part applies to any hydropower license proceeding for which the license has not been issued as of November 17, 2005 and for which one or more preliminary conditions, conditions, preliminary prescrip-

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tions, or prescriptions have been or are filed with FERC.

(2) If DOI has already filed one or more preliminary conditions, conditions, preliminary prescriptions, or prescriptions as of November 17, 2005, the special applicability provisions of § 45.4 also apply.

§ 45.2 What terms are used in this part?

As used in this part:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

Alternative means a condition or prescription that a license party other than a bureau or Department develops as an alternative to a preliminary condition or prescription from a bureau or Department, under FPA sec. 33, 16 U.S.C. 823d.

Bureau means any of the following organizations within DOI that develops a preliminary condition or prescription: the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, or National Park Service.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

DOI means the Department of the Interior, including any bureau, unit, or office of the Department, whether in Washington, DC, or in the field.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq.*

Hearings Division means the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior, 139 E. South Temple,